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applicable solely on the ground that, since under our statute it is unnecessary for the plaintiff in any case to set up more than the fact of defendant's adverse claim, any further particularization is mere surplusage. The presence of such surplusage should not, of course, cast an additional burden on the plaintiff.¹²

J. U. C., Jr.,

Boundaries: Effect of Acquiescence in Agreed Boundary Line.—In *Clapp v. Churchill*,¹ a late case involving the title to a narrow strip of land between the survey line and a fence which had been maintained by the defendant as the true boundary for over five years, Justice Henshaw, Melvin and Lorigan, J. J., concurring, ruled (a) that acquiescence in a boundary line thus marked could be considered only as evidence of an earlier agreement; hence only where a formal agreement would have been valid; and (b) a formal agreement fixing such line would not be valid unless both parties were shown to have believed the line uncertain.

We submit that both these rulings conflict with many previous decisions of the Court, which recognize that a boundary line may be fixed by agreement, not only in cases of uncertainty,² but also in cases of dispute.³

The Court's ruling as to acquiescence seems a confusion of the doctrine of marked boundaries with the "lost grant" theory of prescription; but the fixing of boundaries, whether by agreement or by acquiescence, gives a right to the holder entirely distinct from a prescriptive title.⁴ The possessor holds by the legal title, the lines marked on the ground attaching themselves to the calls of his deed.⁵ It has even been held that once this right has attached the possessor holds such a strip adversely without payment of additional taxes thereon, it having become a part of his original tract.⁶

Acquiescence adds nothing to the validity of a line once validly agreed upon,⁷ but, by itself, if continuing for a period equal to that of prescription, acquiescence has the same effect as an agreement.⁸ In holding this the courts have disregarded the presence or absence of uncertainty or dispute.⁹ To constitute acquiescence there must be

¹² *Bell v. Pleasant*, (1904), 145 Cal. 410, 78 Pac. 957.

¹ 45 Cal. Dec. 249 (Feb. 28, 1913).

² *Silvarer v. Hansen*, (1888) 77 Cal. 579; 20 Pac. 136; *Thaxter v. Inglis*, (1898) 121 Cal. 593; 54 Pac. 86; *Dierssen v. Nelson*, (1903) 138 Cal. 394; 71 Pac. 456.

³ *Western Union Oil Co. v. Newlove*, (1905) 145 Cal. 772; 79 Pac. 542.

⁴ *Brown v. Leete*, (1880) 2 Fed. 440.

⁵ *Young v. Blakeman*, (1908) 153 Cal. 477; 95 Pac. 888.

⁶ *Price v. DeReyes*, (1911) 161 Cal. 484; 119 Pac. 893.

⁷ *Hastings v. Stark*, (1868) 36 Cal. 122.

⁸ *Sneed v. Osborn*, (1864), 25 Cal. 619; *Columbet v. Pacheco*, (1874), 48 Cal. 395; *Johnson v. Brown*, (1883), 63 Cal. 391; *Quinn v. Windmiller*, (1885), 67 Cal. 461, 8 Pac. 14.

⁹ *Columbet v. Pacheco*, (1874), 48 Cal. 395.

possession with the knowledge and assent of the adjoining owner;¹⁰ but the mere erection of a fence has no effect unless it was intended to mark the line.¹¹

The true test in all cases, whether of agreement or acquiescence, seems to be, not whether there was uncertainty as to the description or location of the land, but whether the boundary marked on the ground was bona fide intended to settle the true line.¹² The courts look with favor upon such settlements without litigation,¹³ if made in good faith, and not as conveyances contrary to the Statute of Frauds;¹⁴ and after a valid agreement,¹⁵ or acquiescence for the prescribed period¹⁶ will not disturb a line so fixed. Such agreement or acquiescence will not be nullified on the ground that the parties might have ascertained the true line,¹⁷ or on the ground of mistake,¹⁸ or unless fraud or undue influence is shown.¹⁹

H. C. K.

Constitutional Law—Delegation of Legislative Power; Regulation of Sale of Poisons.—On March 6, 1907, the State legislature passed an act to regulate the sale of poisons. The question of the constitutionality of this law was raised in the case of *Ex parte Potter*,¹ on the ground that it delegated legislative power to the State Board of Pharmacy. The court held that the particular regulation adopted by the board of pharmacy was not authorized by the statute, but, in passing, sustained the constitutionality of the poison act itself. The case had previously been before the District Court of Appeal, Second District,² the justices of which court had been unable to agree upon a decision of the questions involved.

The poison act enumerated many poisonous, deleterious and injurious drugs and other substances in a list called "Schedule A." It regulated the sale of articles in Schedule A, and in section 4 provided: "When in the opinion of the State board of pharmacy, it is in the interest of the public health, they are hereby empowered to further restrict, or prohibit the retail sale of any poison, by rules not inconsistent with the provisions of this act, by them to be adopted, and

¹⁰ *Burris v. Fitch*, (1888), 76 Cal. 395; 18 Pac. 864.

¹¹ *Allen v. Reed*, (1876), 51 Cal. 362; *Shiels v. Haley*, (1882), 61 Cal. 157.

¹² *White v. Spreckels*, (1888), 75 Cal. 610; 17 Pac. 715; *Dundas v. Lankershim Dist.*, (1909), 155 Cal. 692; 102 Pac. 925.

¹³ *Cavanaugh v. Jackson*, (1891), 91 Cal. 580; 27 Pac. 931.

¹⁴ *Nathan v. Dierssen*, (1901), 134 Cal. 282; 66 Pac. 485; *Lewis v. Ogram*, (1906), 149 Cal. 505; 87 Pac. 60.

¹⁵ *Moyle v. Connolly*, (1875), 50 Cal. 295; *Truett v. Adams*, (1884), 66 Cal. 218; 5 Pac. 96.

¹⁶ *Helm v. Wilson*, (1888), 76 Cal. 476; 18 Pac. 604.

¹⁷ *Loustalot v. McKeel*, (1910), 157 Cal. 634; 108 Pac. 707.

¹⁸ *McGee v. Stone*, (1858), 9 Cal. 600; *Biggins v. Champlin*, (1881), 59 Cal. 113; but see *Smith v. Robarts*, (1885) (Cal.) 9 Pac. 104.

¹⁹ *Bree v. Wheeler*, (1906), 4 Cal. App. 109; 87 Pac. 255.

¹ *Ex parte Potter* (1913), 45 Cal. Dec. 237, 130 Pac. 721.

² *Ex parte Potter* (1912), 126 Pac. 1135.